

Before the
Federal Communications Commission
Washington, DC 20554

FEB 25 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b)

Table of Allotments

FM Broadcast Stations

(Bridgeton and Pennsauken, New Jersey)

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MB Docket No. 02-382

RM-10615

To: Assistant Chief, Audio Division
Media Bureau

REPLY COMMENTS

Cohanzick Broadcasting Corporation ("Cohanzick"), licensee of Station WSNJ-FM, Bridgeton, New Jersey, and New Jersey Radio Partners, L.L.C. ("New Jersey Radio"), assignee of WSNJ-FM (together, "Joint Parties"), by their respective counsel, hereby submit their Reply Comments in the above-captioned proceeding. In addition to the Joint Parties, Comments were filed by David Brouda ("Brouda"), the School District of Haverford Township ("Haverford"), West Windcor-Plainsboro High School South ("WWP"), and David C. Weston ("Weston"). Brouda's comments have already been addressed in the Joint Parties' Comments. Haverford, WWP and Weston note that the Joint Parties' petition, which would allot Channel 300A to Pennsauken, New Jersey as its first local service, would likely interfere with the operations of Haverford's Class D Station WHHS, Haverford Township, New Jersey, and WWP's Class D Station WWPH, Princeton Junction, New Jersey.

1. The Joint Parties are aware that the activation of Channel 300A at Pennsauken likely will force WHHS and WWPH to abandon their frequencies. The Joint Parties are actively working on engineering solutions that would permit these stations to continue to operate, and have contacted representatives of WHHS to discuss possible solutions. However, the Joint Parties are under no obligation to protect these stations under the Commission's rules. WHHS and WWPH are Class D noncommercial educational stations, and WSNJ-FM is a Class A

44

primary commercial station. Class D stations are secondary broadcast facilities, and are permitted to operate only on a non-interfering basis. More than twenty years ago, the FCC made the determination that, although Class D stations provide a valuable service, their operation cannot be allowed to interfere with full-service operations which use spectrum more efficiently.¹ In order to provide certainty and clarity the Commission adopted the general allocation standards that govern the relationship between Class D low-power operations and primary-service high-power operations today.² Those standards provide that Class D facilities are *not even considered* when a full-power station initiates a proceeding to modify its facilities either by application or petition for rule making.³ The rules applicable to Class D stations are based on actual interference, not potential interference, and have no application at all in a proceeding to amend the FM Table of Allotments. Moreover, if and when an application is filed for WSNJ-FM to implement the rule making, the rules make clear that a Class D station must give way if actual interference is caused.⁴

2. The rules may seem harsh when applied to Class D stations that have had as long a history of useful service to the community as WHHS and WWPH. But to afford protection to WHHS and WWPH simply by virtue of their long history or community service, no matter how meritorious, would be to grant those stations a status to which they explicitly are not entitled.⁵

¹ *Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations*, 69 F.C.C.2d 240 (1978).

² *Id.*

³ See 47 C.F.R. §§ 73.207-208. See *Brighton, New York*, 8 FCC Rcd 793,794 (1993) (allotment made over the objection that it would cause a Class D station to cease operation); *Sanford, North Carolina*, 10 FCC Rcd 9266 (1995) (Notice of Proposed Rule Making issued despite short spacing to Class D station, since Class D station was not entitled to protection from full-service stations).

⁴ See 47 C.F.R. § 73.512(d)

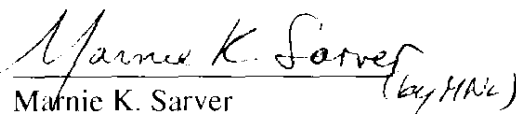
⁵ Nor can the Commission make a public interest determination based on the programming produced by WHHS and WWPH. As a matter of policy, the FCC does not consider the preservation of "unique" programming to be a public interest factor in its station licensing decisions, and that policy has been upheld by the Supreme Court. *FCC v. WNCN Listener's Guild*, 450 U.S. 582, 585 (1981); *Multicultural Radio Broadcasting*,

Indeed, there can be no way to grant such stations interference protection rights without significant changes to the way in which full service allotments are made. Accordingly, any question of waiving or modifying the rules for some subset of Class D stations could be appropriately considered only in the context of a rule making proceeding of general applicability, and not in the context of an individual allotment proceeding such as this one.

3. The Joint Parties reiterate their continuing interest in applying for Channel 300A at Pennsauken, New Jersey. If this allotment is granted, the Joint Parties will file an application for Channel 300A at Pennsauken, and will promptly construct the facilities if the application is granted. For the reasons set forth herein and in the Joint Parties' Comments, the Commission should deny the objections to the Joint Parties' proposal.

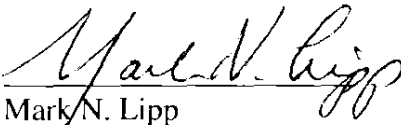
Respectfully submitted,

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February 25, 2003

Inc., 15 FCC Rcd 20630 (2000) (declining to revisit this policy even when unique foreign language and ethnic informational programming were threatened).

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy and Bacon, do hereby certify that I have on this 25th day of February, 2003 caused to be mailed by first class mail, postage prepaid, copies of the foregoing **"Reply Comments"** to the following:

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